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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER, Petitioner

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, ET AL., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HERBERT E. SAIER,
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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Constitutional Provisions Involved	6
Statement of the Case	9
Argument for Granting the Writ	14
Conclusion	26
Appendix A	27

CITATIONS

Cases:

City of Saginaw vs. Consumers Power Co., 213 Mich. 460 at 469 and 482	21
Dodge vs. Blood, 299 Mich. 364 at 367	21
Dolby vs. State Highway Commissioner, 283 Mich. 609	17
Gunn vs. Gunn, 205 Mich. 198	21
Hurtado vs. California, 110 U. S. 516 at 535	25
Kittridge vs. Circuit Judge, 80 Mich. 200	19
Manning vs. Ketchum, 58 Fed. 2nd 948	19
Marble vs. Butler, 249 Mich. 276	21
McHenry vs. Ford Motor Co., 269 Fed. 2nd, Page 18	21
McShane vs. Moldovan, 172 Fed. 2nd 1016	19
Nichols vs. Judge of Superior Court, 130 Mich. 187	18
Oliver, In re, 333 U. S. 257	16
Osborn vs. Bank of U. S., 9 Wheat (22 U. S.) 738, 866	17
People ex rel., Union Bag and Paper Co. vs. Gilbert, 256 N. Y. S. 442	20
Saier, In re., 342 Mich. 587	24
Shannon vs. Smith, 31 Mich. 450	19
State Bar of Michigan vs. Lansing, 361 Mich. 185 at 197	6, 22
Tumey vs. State, 273 U. S. 510	20, 22
Wright vs. Houdaille-Hershey Corp., 321 Mich. 21	21
Yazoo vs. Miss. Valley R. R. Co., 42 L. R. A. (N. S.) 1172	22

Page

Statutes and Other Authorities:

Amendment to the Constitution of the United States:
First Amendment, Section 1 6
Fourteenth Amendment, Section 1 6

Federal Civil Rights Statutes:
Title 28 USCA 1343 (3) 5, 7
Title 42 USCA 1983 ..... 5, 7
Title 42 USCA 1985 (3) 5, 7

Michigan Compiled Laws of 1948, Section 604.7 .....5, 8, 19

Michigan Constitution of 1908:
Article V, Section 21 18

State Bar Act, Michigan Public Act #58 of 1935 .....3, 4, 5, 8, 13, 14, 16, 18, 25
State Bar Act, Section 1 8

Supreme Court Rules Concerning the State Bar of Michigan:
Rule 3 ..... 5, 8
Rule 14, Section 1 8
Rule 14, Section 2 8
Rule 15, Section 4, (Old) 8
Rule 15, Section 4, (New) 9
Rule 15, Section 6 9
Rule 15, Section 8 9
Rule 15, Section 26 8

Supreme Court Canons of Professional Ethics:
Canon 29 9
Canon 32 9
Canon 41 9

Miscellaneous:

Michigan State Bar Journal, Volume Forty, Number six of June, 1961, with State Bar of Michigan Roster 13

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Herbert E. Saier, petitioner, prays that a writ of certiorari issue to review judgment of the United States Court of Appeals for the Sixth Circuit, issued August 4, 1961, affirming the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is printed in the Appendix herewith (App. A, pp. 27-34) Civil Action No. 14462.

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division is printed in the Appendix, nine copies attached of Court below (R. 87a-88a-89a). Civil Action No. 20473, of the Petitioner under Rule 23, Par. 1, (i).

The above cases have not been reported.

JURISDICTION

1. The judgment sought to be reviewed is dated and entered August 4, 1961, in the United States Court of Appeals for the Sixth Circuit (App. A, pp. 27-34).

2. There are no orders respecting a rehearing or granting an extension of time within which to petition for certiorari.

3. The jurisdiction of this Court is conferred by 28 *U. S. C.*, Sections 1254 (1) and 2101 (c).

QUESTIONS PRESENTED FOR REVIEW

1. Were the District Court and Court of Appeals in error in finding that this Petitioner's civil complaint failed to allege a cause of action cognizable by the Federal Court?

2. Does the Rule of the Supreme Court Rules Concerning the State Bar of Michigan give this Petitioner a right to have a complaint against members of the State Bar of Michigan processed as provided in Sections 4, 6 and 8 of said Rule 15?

3. Did the State Bar of Michigan deprive this Petitioner of equal protection under the law and did said State Bar of Michigan exercise unjust discrimination against this Petitioner when it neglected and refused to process complaints (called Requests for Investigation in the Rule — Forms are printed by the State Bar of Michigan) filed by this Petitioner against members of said State Bar?

4. Did the Supreme Court of the State of Michigan deprive this Petitioner of equal protection under the law, of due process of law, of an impartial tribunal and did said Michigan Supreme Court unjustly discriminate against this Petitioner when it denied this Petitioner's two applications for a Writ of Mandamus to compel the State Bar to act in accordance with said Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan?

5. Did the Michigan Supreme Court have jurisdiction, power and legal authority to sit in judgment and rule on the Petitioner's applications for Writ of Mandamus when the writ was requested against the State Bar of Michigan, of which all judges of said Michigan Supreme Court were

members with a financial interest therein, and when the rules sought to be applied were written by said Michigan Supreme Court under *Michigan Public Act* #58 of 1935?

6. Was District Judge Fred W. Kaess disqualified to sit on the trial of this case because of his being a compulsory member of the Defendant State Bar of Michigan with a financial interest therein?

7. Did the trial Court mis-state the issues involved in the case, pointing toward presumed ulterior purposes of the Plaintiff which were without justification in the record while brushing over and belittling the real issues and good-faith purposes of the Plaintiff?

8. Did the U. S. Court of Appeals for the Sixth Circuit deliberately mis-state the factual basis for its opinion or did it neglect to examine the documentary confirmation of facts which were not contradicted by any competent documentation by the Defendants-Appellees?

9. Did the U. S. Court of Appeals have any justification at law to ignore the numerous relevant authorities cited by the Appellant, many from said Sixth Circuit, in rendering its decision?

10. Did the U. S. Court of Appeals, Sixth Circuit, have any justification to resort to a presumption of good faith on the part of the Judges of the Michigan Supreme Court in the face of the deliberate false finding as to title to the State Bar property, in the face of the unquestionable refusal to require the State Bar to comply with the rules written by said Court Concerning said State Bar, in the face of the too frequent exercise of supervisory powers over said State Bar to the claimed extent sufficient to make the said judges Defacto officers and regular administration officers of said State Bar, in the face of such close co-operation and "sheltering" activities concerning said State Bar that apparent conspiracy with said State Bar was established?

11. Did the State Bar of Michigan have any legal justification for requesting or demanding of this Petitioner that he file another (No authority to demand revisions of complaint is given in the Rules) request for investigation after said State Bar had served the complaint of this petitioner upon the attorneys charged with misconduct; was not the service of the complaint upon the accused attorneys an act from which the State Bar could not retreat — was it not

the legal duty and obligation of the State Bar to follow through under the rules until the matter was duly disposed of by dismissal or other action?

12. Is the statute establishing an integrated b .r, *Michigan Public Act* #58 of 1935, unconstitutional and void for the reasons that it is a multiple purpose act and that it is against public polic, ?

13. Are the Supreme Court Rules Concerning the State Bar of Michigan unconstitutional and void because they provide in express terms that the Michigan Supreme Court, which acted in a legislative capacity in drafting the rules and which, under the supervisory powers established by common law and statutory law, acts in an administrative or executive capacity and, also, by the express terms of said rules, serves in a judicial capacity in sitting on appeals involving same and each and every member of said Court must be a member of the State Bar and, therefore, have a financial interest therein?

14. Is Rule 15 of the Supreme Court Rules Concerning the State Bar of Michigan unconstitutional and void because it expressly provides that the committee to which any complaint is referred must serve in the multiple capacities of investigator, magistrate, complainant and prosecutor?

15. Was there legal or factual justification for the Court of Appeals, Sixth Circuit, to falsely state in its opinion that this petitioner alleged in his complaint that he was requested to furnish new forms to the State Bar on October *3*, 1956, when the complaint expressly denies having received any — October *8th*, 1956, letter from the State Bar and shows the purported contents of the claimed letter to be absolutely false, because the complaint claimed therein to be returned to this Petitioner has never left the State Bar file and is still there today (Admitted by counsel for State Bar); and, on the basis of such a false premise, obviously unfounded in the record, was it not an unjustified conclusion of the Court of Appeals, that this Petitioner put "himself in default by his own allegation?" (It was admitted in open Court in both District Court and the Court of Appeals that Request for Investigation filed September 10th, 1956 was still in the Bar file by Counsel for the State Bar) — and did not this conclusion of default materially affect the decision of the Court?

16. Was not the arbitrary stopping of the processing of Petitioner's complaint, after copies had been served on the attorneys complained about by this Petitioner according to the rules, a denial of equal protection under the law in violation of 28 *U. S. C. A.* #1343 (3) and 42 *U. S. C. A.* #1983 and 1985 (3), and violated all of Petitioner's rights with bad faith, malice, prejudice, partiality, undue influence and other improper motives;

17. Was not the Michigan Supreme Court guilty of acting in both legislative and judicial capacities in violation of the Constitutional guarantee of due process of law and in violation of the principle of separation of powers when it sat on this Petitioner's application for a Writ of Mandamus involving the Supreme Court Rules Concerning the State Bar of Michigan, which were drafted by said Michigan Supreme Court for the said State Bar of Michigan, of which all members of said Michigan Supreme Court were dues paying members, with a financial interest therein, and said Michigan Supreme Court acted in a supervisory capacity over said State Bar (Executive) — thusly making their actions unconstitutional, without jurisdiction and, hence, without judicial immunity!

18. Did the Michigan Supreme Court have jurisdiction, power and legal authority to sit in judgment and rule on the Petitioner's Applications for Writ of Mandamus when writ was requested under "Section 604.7 *Michigan Compiled Laws* of 1948" when they were well aware of this law and their acting thereon constituted a denial of due process and violated all of Petitioner's rights with bad faith, malice, prejudice, partiality, and from other improper motives!

19. Is Rule 3, *Supreme Court Rules* Concerning the State Bar of Michigan unconstitutional in that all Federal Court Judges and Court of Appeals for 6th Circuit Justices in Michigan and the 2 Justices from Michigan of Court of Appeals, Sixth Circuit at Cincinnati, Ohio, after being selected as a qualified candidate and after being duly appointed to a Federal Judge's post with confirmation thereof a Federal Judge would be denied the right to serve in such honorable office unless he joined a certain union and paid dues thereto, as is required in Michigan under the Integrated Bar Act, *M. P. A.* #58 of 1935, and under the

Supreme Court Rules Concerning the State Bar of Michigan?

20. Did the District Court and Court of Appeals for the Sixth Circuit err in not ruling on the two opinions of the Attorneys General of Michigan on the unconstitutionality of the State Bar of Michigan owning the State Bar Building, at Lansing, Michigan and with certified copy of deed showing title in the State Bar of Michigan and not the State of Michigan?

21. Did the Court of Appeals for the Sixth Circuit err when it failed to rule on the falseness of Michigan Supreme Court and State Bar of Michigan claimed they were "Incorporated" when the letters of the Clerk of Ingham County, Michigan shows no incorporation papers filed in his office and the Michigan Corporation and Securities Commission show no record of a Corporation by name of The State Bar of Michigan in either our active or inactive files. Was this not perjury on the Part of the State Bar of Michigan and its officers?

22. Did not the Supreme Court commit fraud and file a false document and sign same in a conspiracy with the State Bar of Michigan in the *State Bar of Michigan vs. Lansing*, 361 Mich. 185, at 197, tax matter of State Bar Building at 310 Townsend Street, Lansing, Michigan?

23. Was Justice O'Sullivan of the 6th Circuit disqualified to sit on the trial of this case because of his being a compulsory member of the Defendant State Bar of Michigan with a financial interest therein?

24. Was Chief Justice Miller of the 6th Circuit disqualified to sit on the trial of this case because he admitted he had been sued for damages in a case such as this. His admittance was from the bench?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

First Amendment:

> "Section 1. Right to petition the Government for a redress of grievances."

Fourteenth Amendment:

> "Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

FEDERAL CIVIL RIGHTS STATUTES

Title 28 *U. S. C. A.* 1343 (3):

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.

3. To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Title 42 *U. S. C. A.* 1985 (3):

Conspiracy to interfere with civil rights — depriving persons of rights or privileges.

"* * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Title 42 *U. S. C. A.* 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution

or laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

MICHIGAN COMPILED LAWS OF 1948

Section 604.7 *Michigan Compiled Laws* of 1948 provides:

> "No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; * * *."

STATE BAR OF MICHIGAN RULES

Rule 3:

> "* * * Members who are judges of courts of record shall register as active members. * * *"

Rule 15, Section 26, Review by Supreme Court:

> "Any final order of the circuit court in any matter of misconduct or reinstatement shall be subject to review by the supreme court, in its discretion, upon both the law and facts. * * *"

References to the Rules and Sections of the State Bar of Michigan; *Michigan Public Act* #58 of 1935 and *Supreme Court Amended Rule 1*, State Bar of Michigan are hereby listed below with page numbers as printed in the Appendix of the Court below and certified to this Court and this Petitioner has filed nine copies of his Appendix below and also nine copies of the State Bar of Michigan Appendix in Court below:

	Page
Michigan Public Act No. 58 of 1935	R. 41a-42a
State Bar of Michigan Rules	
Rule 14, Section 1	R. 39a
Rule 14, Section 2	R. 40a
Rule 15, Section 4 (old)	R. 34a

Page

Rule 15, Modified Section 4 ..... R. 35a
Rule 15, Section 6 ..... R. 36a-37a
Rule 15, Section 8 ..... R. 36a
Supreme Court Amended Rule 1 ..... R. 42a-43a
Supreme Court Canons of Professional Ethics
Canon 29 ..... R. 14a
Canon 32 ..... R. 14a
Canon 41 ..... R. 14a

State of Michigan, Attorney General Opinions
Hon. Paul L. Adams, Attorney General ..... R. 70a
Hon. Thomas M. Kavanagh, Attorney General ..... R. 70a

STATEMENT OF MATERIAL FACTS

Herbert E. Saier, the Petitioner herein, is a citizen of Springfield, Missouri (R. 2a) and filed an action in the United States District Court for Eastern District of Michigan, Southern Division, in which he sought to recover damages from the State Bar of Michigan, and the Michigan Supreme Court, et al., (R. 2a-3a). His complaint specifically set out diversity of citizenship (R. 2a-59a-81a) which was never abandoned (App. A, pp. 28-29 of Opinion) — this point was argued in both the District Court and the Court of Appeals Sixth Circuit and in each instance opposing counsel acknowledged diversity of citizenship, and this Petitioner asks that all questions reviewable under a diversity of citizenship case be reviewed by this Court, and, also, claimed violations of the Federal Civil Rights Statutes (R. 81a-85a). His diversity of citizenship was argued and undeniably established on the hearing on motions to dismiss filed by defendants, and, also, there was argument on the civil rights phase of the case. However, there was no trial, because the District Court granted the motion to dismiss, holding that no cause of action had been stated in the complaint. This Petitioner pointed out to the District Court Judge that he was a dues paying member and having a financial interest in the outcome of this hearing, before the hearing was held (R. 75a) and should disqualify himself and call in an outside Judge (R. 75a).

This Petitioner then appealed to the Court of Appeals for the Sixth Circuit and the dismissal was affirmed, so he is now seeking a review by Writ of Certiorari.

On October 10, 1955, Petitioner filed with the State Bar of Michigan a complaint (Request for Investigation — Forms printed by the State Bar (R. 67a)) against certain attorneys. No action was taken, so Petitioner assembled additional information and, thereafter on July 16, 1956, a second complaint at the request of Executive Secretary and State Grievance Chairman Bachmann, was filed in more specific terms (R. 10a-71a-72a). The Petitioner was then advised by letter by Executive Assistant Joseph Cox that he should revise his complaint and make it more general (R. 20a-21a-64a) so, on July 28, 1956, the Petitioner filed a third complaint (R. 64a) set up in more general language. On July 30, 1956, Mr. Bachmann, Secretary for State Bar wrote this Petitioner advising of his serving the complaints upon the several attorneys (R. 19a) (Court of Appeals found that State Bar served said attorneys with said complaints (App. A, pp. 28-29)). All complainants are threatened with contempt by the Supreme Court as stated in Paragraph Three of the letter of Mr. Bachmann (R. 19a). Then nothing will be done on the Complaint, but Petitioner did not let it die, like his October 10, 1955 complaint. That about two weeks after July 30th, 1956 both Secretary Milton Bachmann and Joseph Cox, Executive Assistant, told this Petitioner orally, but in presence of a witness, that the accused attorneys wanted two more weeks to answer the complaint (R. 64a). No answer was made by the accused attorneys (R. 64a) but on August 28, 1956, this Petitioner received a letter from Secretary Bachmann requesting that the complaint be revised and made more specific (R. 64a). Thereafter, in compliance with said written request, this Petitioner filed a fourth complaint on September 10, 1956, which Executive Secretary Bachmann examined and praised as being biggest and the best organized complaint ever filed with him (R. 68a-71a-72a) every charge was followed by the proofs (R. 67a-68a-71a-72a). Bachmann signed for the September 10, 1956 complaint (R. 64a) at request of Petitioner.

No further action took place, so in about two weeks this Petitioner called at the State Bar Office in Lansing and

Secretary Bachmann bluntly advised this Petitioner that nothing was going to be done on his complaint — that he would take no action against Mr. Glassen because he was on the 6th Congressional Grievance Committee and worked very closely with the State Bar Office (R. 65a-66a-69a).

On October 8, 1956, this Petitioner took additional evidence of professional misconduct to Supreme Court Chief Justice John R. Dethmers and reported the refusal of the State Bar to proceed on his complaints (R. 65a). Justice Dethmers of the Michigan Supreme Court called Secretary Bachmann on the phone, in the presence of this Petitioner, and told him the charges were very serious and stated that the State Bar should take action (R. 65a).

No action was taken by the State Bar and this Petitioner did not go to the State Bar or see or talk to Mr. Bachmann until November 15, 1956, when Petitioner served Mr. Bachmann with the papers in Re his application to the Michigan Supreme Court for a Writ of Mandamus to compel the State Bar to process his complaints, as provided in the rules (R. 65a). The Supreme Court was furnished full information as to the misconduct (R. 10a-11a-12a-33a-67a-68a). Defendants do not deny charges are true (R. 25a-26a).

Mandamus was denied on January 16, 1957, but Justice Carr and Chief Justice Dethmers advised this Petitioner to go back to the State Bar and the matter would be taken care of (R. 66a). This Petitioner had many conversations with Secretary Bachmann and local counsel for State Bar, Russell Searl, but nothing was done but stall, stall (R. 66a) so on August 1, 1958, a second application was made to Defendant Michigan Supreme Court to issue a Writ of Mandamus to compel Defendant State Bar to process complaints of the Petitioner under Rule 15, Sections 4, 6 and 8 (R. 34a-35a-36a-37a) Rule 14, Sections 1-2 (R. 39a-40a). This second rehearing application for Mandamus contained 31 additional pages of reasons and grounds why mandamus should issue (R. 76a). Included in the additional papers filed in the State Supreme Court on the second application for mandamus was documented proof that one of the attorneys had falsified as to material facts on the first mandamus hearing (R. 15a-16a-67a), (See Para-

graphs 17-21-27 and 28 in Certified Record on Petition for Writ of Certiorari from Court of Appeals for the Sixth Circuit attached and part of this record). However, said State Supreme Court denied said second application for mandamus on December 2, 1958 (R. 11a). The State Bar of Michigan File was in the Clerk of the Michigan Supreme Court Office for comparison of Clerk of Supreme Court records and Petitioner's (See Clerk Hon. Donald F. Winters' letter in attached Certified Record on Petition for Writ of Certiorari) and (R. 84a).

The District Court ruled that Petitioner had no right to disbarment of an attorney (R. 88a-89a) but such an issue was not before said Court. This Petitioner does not claim in his complaint that he had such a right — his complaint set forth that he had a right to have his complaint processed in accordance with the procedural rules in the premises (R. 58a) but he claimed no right to any particular decision after investigation. He claimed the State Bar and Supreme Court did not carry out the canons of ethics (R. 14a).

The Court of Appeals for the Sixth Circuit ruled that this Petitioner would not have benefited by a disbarment action, which it could not have known without going into the questions of misconduct charged, and guilt or innocence of said attorneys was not at issue in said Court. The details of this Petitioner's documented proofs of perjury and false statements of Bachmann and Searl in Dean matter. (R. 30a-31a-38a-39a), of the disappearance of a Probate File, or an officer's report on an attempted murder, of Probate Orders showing misappropriation of funds, failure to account and false reports as to assets and as to income (R. 67a) are in the record only to show abuse of discretion, arbitrary denial of equal protection under the law, denial of due process of law, of conspiracy to deprive this Petitioner of rights guaranteed to him by the Constitution, etc., etc. (R. 58a) but the complaint contains nothing to indicate that this Petitioner seeks a review of the State Court rulings (R. 58a).

The Court of Appeals found that this Petitioner had defaulted when he failed to revise his complaint at the request of the State Bar (28-29, 32-33, 34), but apparently failed to consider the undisputed facts as to this Petitioner hav-

ing revised his complaint three times (R. 64a) at request of the State Bar (R. 64a) and that Secretary Milton E. Bachmann had bluntly told Petitioner that his complaint would never be acted upon because of relations of one of the accused attorneys with the State Bar (R. 64a) before this Petitioner applied for a writ of Mandamus (R. 69a).

The record shows that Defendant State Bar contends that it returned this Petitioner's complaint on October 8, 1956 (R. 28a-29a) which Petitioner denies (R. 29a) and the Petitioner alleged that he received no October 8th, 1956 letter (R. 29a) and that said purported letter is utterly false in that letters from the Clerk of the Supreme Court of Michigan show that said complaints were still in the file many months later, yes, years later (R. 84a-85a). It was on the false premise that this Petitioner's complaint was returned by the State Bar by Secretary Bachmann in October of 1956 with another request for revision that the Court of Appeals based its finding of default, even though the record showed undeniable documentation as to such false premise (R. 73a-84a-85a). (Three Clerk's Supreme Court letters were in both the District Court and were read). (General Counsel admitted September 10th, 1956 complaint was in Bar File in his office) also (R. 84a).

The law gives the Michigan Supreme Court supervisory powers over the lawyers and judges of the State (R. 79a-80a) expressly provides that said Supreme Court draft rules for the State Bar (*Michigan Public Act* #58 of 1935). The said Supreme Court then provided in its rules prepared for said State Bar that all questions raised under said rules could be appealed to said Supreme Court (Rule 15, Section 25) and said rules (Rule (3)), also, provided that all attorneys and judges in the State of Michigan be dues paying members of said State Bar or they would be subject to summary suspension. June, 1961 Issue of the Michigan State Bar Journal, Volume Forty — Number six — gives the 1961 State Bar of Michigan Roster of members of the State Bar of Michigan and, according to (Rule 3), all members of the Michigan Supreme Court and all members of the Federal District Courts in Michigan and the Justices of the Sixth Circuit, U. S. Court of Appeals, in Michigan and the Michigan members of the U. S.

Court of Appeals for the Sixth Circuit, in Cincinnati, Ohio are also listed.

In this Petitioner's civil complaint filed in the District Court, the questions of unconstitutional actions by Defendants State Bar and Michigan Supreme Court were clearly raised, the denial of rights guaranteed by the Constitution was pointed out, the unconstitutionality of the Integrated Bar Act, *Michigan Public Act* #58 of 1935, and, also, the unconstitutionality of the Rules Concerning the State Bar of Michigan was raised. These questions were argued before said District Court on the Defendants' motion to dismiss. These questions were again raised in the appeal to the Court of Appeals. These questions have been raised by this Petitioner at all stages of the proceedings, just as they are now raised in this application for a Writ of Certiorari. Petitioner has Diversity of Citizenship.

The pleadings are obvious, the questions on appeal are clear and no purpose would be served to quote in detail the numerous places where these questions were raised in each of the stages of these proceedings. (R. 2a-3a-4a-8a-9a-10a-33a-59a-70a-79a-80a-81a-84a-85a are a few).

ARGUMENT FOR GRANTING THE WRIT

Reasons why Certiorari should be granted.

In this matter every requisite for the issuance of a Writ of Certiorari is present:

Petitioner seeks review by certiorari of a final decision of the U. S. Court of Appeals, Sixth Circuit, under 28 U. S. C., Sections 1254 (1) and 2101 (c).

This case involves questions of both Constitutional and Statutory Law, some of which have never before been decided by this Court.

The issues raised herein are of grave importance to every practicing attorney, to every judge in all our courts, to every citizen in the country and to the general public so far as and wherever the public is involved in our jurisprudence.

The actions involved in this application for certiorari are official actions which are repugnant to our constitutional

concepts of equal application of the law, due process of law, impartial tribunal and freedom from unjust discrimination, of which civil rights this Petitioner claims to have been deprived.

In the first instance the State Bar failed, neglected and refused to process the complaint filed by this Petitioner even though the rules governing said State Bar expressly provide the method and manner of processing any and all complaints. Said State Bar officers, without any power or authority under said rules, delayed action by making contradictory and inconsistent demands for making said complaint "more general" and "more specific" before advising this Petitioner bluntly that it was not going to act thereon; said State Bar did at one time actually start processing said complaint then arbitrarily terminated same after being advised that the accused attorneys could not answer said charges made against them. In this regard the record shows that said State Bar falsely denied having started processing said complaint and, with the complaint obviously never leaving the State Bar file and with same being repeatedly examined by the State Supreme Court and numerous attorneys, said State Bar falsely contended that it returned said complaint to this Petitioner in October, 1956. Said State Bar refused to process said complaint even after it was specifically advised by Justices of the Supreme Court of Michigan to take action thereon. Yet, while it was so refusing to act, it was having its Secretary Bachmann and its attorney Searl repeatedly promise this Petitioner that its investigation service was available to him and any other citizen.

Then the State Supreme Court, which served in a supervisory capacity over the State Bar, which drafted said rules for the State Bar, and entitled them, "Supreme Court Rules Concerning the State Bar of Michigan" and was, therefore, very familiar with the detailed specifications for the processing of complaints filed with said State Bar, and with the fact that such complaints were provided as a means of petition for redress of grievances, refused this Petitioner's application for a Writ of Mandamus to compel the State Bar to follow its rules in processing of this Petitioner's complaint; the Defendant Supreme Court refused mandamus on two separate occasions — refusing to compel

the State Bar to follow the rules adopted concerning it, purporting to use its discretion contrary to law and for the purpose of permitting the State Bar to avoid the application of its governing rules. To uphold the District Court and Court of Appeals would, in legal effect, be ruling that the said rules are meaningless.

Individual Justices of the State Supreme Court kept in close contact with Executive Secretary Milton E. Bachmann of the State Bar and with Russell Searl, local counsel for said State Bar, taking full advantage of the supervisory power and authority granted by the statute to control this proceeding at all times.

This Petitioner contends that the close contact and complete co-operation displayed by and between the State Bar and the Supreme Court in this matter constitutes a conspiracy to deprive this petitioner of his constitutional rights in violation of the Federal Civil Rights Statute.

In the case of *In re Oliver*, 333 U. S. 257, the Michigan One-Man Grand Jury was held unconstitutional because it was built around a wrongful principle of having one man serve in several different capacities: Investigator, prosecutor, magistrate and Judge. In the case at Bar it is pointed out that *Michigan Public Act* #58 of 1935 established the Integrated Bar in Michigan, requiring all attorneys to belong to the State Bar Association, and said act, also, provides that the State Supreme Court adopt rules and regulations for said State Bar of Michigan; then, in the Supreme Court Rules Concerning the State Bar of Michigan, Rule 15, section 4, provides for the filing of complaints (Requests for Investigation), service of same on respondent attorneys, answer thereto; Section 6 provides for Grievance Committee action on complaints; Section 8 provides for hearings on said complaint; Rule 15, section 26 of said rules provides that any final order growing out of a disciplinary action shall be subject to review by the Supreme Court; and Rule 3 expressly provides that Judges register as active members. Thusly, by the express terms of the statute and the express terms of the rules authorized by the statute, the State Supreme Court serves in the capacities of supervisor (Executive in nature), the drafter of rules and regulations (Legislative in nature), and as reviewing tribunal (Judicial in nature) — all while being composed

of dues paying members of the State Bar, with financial interest therein. This arrangement is clearly much more repugnant to the Constitutional principles of separation of powers, due process of law, impartial tribunal, equal application of the law, and freedom from unjust discrimination than was the case in Oliver case, supra.

Even though mandamus is a discretionary writ, it is based on the basic principle that the Court will exercise a Judicial discretion. This Petitioner contends that the Michigan Supreme Court abused its discretion in its denial of mandamus because said Court's discretion was limited to the confines of the law applicable to the existing situation, and had there been an option as to which law applied, then the Court could exercise its discretion in determining which law to follow, and having determined the applicable law, the discretion ripened into a duty to apply that law and see that it was followed. Petitioner's application for mandamus was a simple demand that the State Bar be required to process his complaint according to the rules concerning the handling of complaints filed with the State Bar. The rules were clear and free from ambiguity; there was only one way to process the complaint, — the way that had been provided in the rules proposed by said State Supreme Court for said State Bar. There was no option, no choice but to follow the rules applicable to the situation. Hence, the Court had only to determine the rule or rules that applied, then it was duty bound to require the State Bar to follow such rule or rules.

In *Dolby vs. State Highway Commissioner*, 283 Mich. 609, the Michigan Supreme Court had held:

> "Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the legislative; or, in other words, to the will of the law. Osborn v. Bank of U. S., 9 Wheat. (22 U. S.) 738, 866."

All the arguments to show that the State Supreme Court acted unconstitutionally in serving in the several capacities mentioned apply equally to the State Bar Grievance Committee provisions in Sections 6 and 8 of Rule 15 of said State Bar Rules, which provide that said committee serve as investigators, magistrates, prosecutors, and complainants.

While discussing the multiple capacities in which the State Supreme Court and the State Bar Grievance Committee served, it would be well to point out that the Integrated Bar Act, *Public Act* #58 of 1935, is unconstitutional for violating Article V, Section 21, of *Michigan Constitution* of 1908, in that it embraces more than one purpose:

Michigan Constitution of 1908, Article V, Section 21, provides in the first sentence:

> "No one law shall embrace more than one object which shall be expressed in its title."

Said *Michigan Public Act* #58 of 1935 embraces the establishment of the State Bar of Michigan, the creation of a closed-shop union of lawyers and judges, the provision for the Supreme Court to organize and prepare rules and regulations concerning same, the provision for the membership dues and provision for establishment of standards of professional conduct. This act arbitrarily establishes a closed-shop bar, a private association with authority to collect dues and perform functions that fall within the scope of the controls which the State alone should perform, thusly attempting to delegate State powers to a private organization, which is repugnant to the constitutional principles which go to make this a government of law and not of men, and is contrary to the ruling in *Nichols vs. Judge of Superior Court*, 130 Mich. 187, as to delegation of powers and duties entrusted by the people. Held "a trust, a duty imposed by the people cannot be surrendered."

The question of judicial immunity has been raised in an attempt to relieve the Michigan Supreme Court from responsibility for its actions. The doctrine of judicial immunity is an old one and is founded on some very sound

principles. However, there was never a time when a judge was held to have judicial immunity when he acted without jurisdiction.

In *Manning vs. Ketchum*, 58 Fed. 2nd 948, where a judge exceeded his authority and jurisdiction in a special inquiry, the Federal Court allowed the claimant to recover against the judge for violating the Civil Rights Act, holding that the judge acted without jurisdiction, hence his acts were not judicial. This is a U. S. Court of Appeals, 6th Circuit ruling.

In *McShane vs. Moldovan*, 172 F. 2nd 1016, is another case in which the U. S. Court of Appeals for the Sixth Circuit ruled that the judge was acting without jurisdiction and had no immunity.

The Supreme Court of Michigan was well aware of the following Michigan statute:

> "Section 604.7 Michigan Compiled Laws of 1948 provides:
>
> > "'No judge of any court shall sit as such in any cause or proceeding in which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; • • •.'"

In this matter, this Petitioner contends that the facts and the law deprive the State Supreme Court of any and all jurisdiction in the premises. The judges were serving in too many capacities, so disqualified themselves in all capacities:

Kittridge vs. Circuit Judge, 80 Mich. 200.

In *Shannon vs. Smith*, 31 Mich. 450, the Court ruled:

> "There is no room • • • for the action of the judge whose relations have rendered it improper for him to try the cause. He is not expected or allowed to exercise his discretion in any part of the proceeding."

The disqualification of a judge is a jurisdictional question, so said judges acted without jurisdiction and their

acting thereon constituted a denial of due process (*Tumey vs. State*, 273 U. S. 510 and also *People ex rel. Union Bag and Paper Co. vs. Gilbert*, 256 N. Y. S. 442)

Under Rule 15, Section 4 of the Supreme Court Rules Concerning the State Bar of Michigan, "All requests for investigation" shall be in writing, filed in triplicate, a copy mailed to respondent — who shall make a full and fair disclosure in writing within 15 days. Then Section 6 of Rule 15 sets out specific steps to be taken by the grievance committee as to investigation of complaints and reports thereon, Section 8 of the same Rule 15 then provides that, "if the grievance committee finds there is reasonable cause to believe that the respondent is guilty of misconduct" it shall have a formal complaint prepared and filed, and notice same for hearing.

This Petitioner complied with the requirements of the rules in preparing and filing his request for investigation, he contends that he complied fully in each of his several requests so filed, but the State Bar failed, neglected and refused to follow through in accordance with the said rules.

If the said rules pertaining to the steps required to process a complaint, or a request for investigation, are to have any meaning whatever, they must refer to complaints filed by Citizens like this Petitioner. Said rules provide the only means for redress for grievances by the public against members of the bar and the denial of this right violates the First Amendment to the Constitution. Unless such rules are construed as vesting a right in any citizen to have his complaint processed, then such rules must be held to be a sham, a ruse, a fraud on the public. By inference the Court of Appeals stated that this Petitioner was given a right by said rules; said Court of Appeals held that this Petitioner lost his rights by failing to fill out new forms when requested by the State Bar — the fact that new forms were repeatedly filled out and filed by this Petitioner shows there was no default on his part so, therefor, his rights would have been retained. Rights must have existed or the Court could not have been trying to justify the loss of same. The right is to have the complaint processed and denial of this right is denial of equal protection under the law, denial

of due process of law and is unjust discrimination in violation of the Constitution. And if said rules do give this petitioner a right to have his complaint processed, then the denial of this right by the State Bar and the State Supreme Court would be a deprivation of equal protection under the law, would be a denial of due process of law and would be an act of unjust discrimination against this Petitioner in violation of the Federal Civil Rights Statutes. Such deprivation was clearly set out in this Petitioner's complaint filed in the District Court and also emphatically stressed before the United States Court of Appeals, so it must be found that both the Trial Court and said Court of Appeals erred in their dismissal and affirmation of dismissal, respectively, because on a motion to dismiss the complaint alone is before the Court.

> *City of Saginaw vs. Consumers Power Co.*, 213 Mich. 460, at 469 and 482;
> *Gunn vs. Gunn*, 205 Mich. 198.

And all well pleaded facts must be considered as true for the purpose of said motion:

> *Dodge vs. Blood*, 299 Mich. 364 at 367;
> *Wright vs. Houdaille-Hershey Corp.*, 321 Mich. 21;
> *Marble vs. Butler*, 249 Mich. 276.

And in *McHenry vs. Ford Motor Co.*, 269 Fed. 2nd 18, the Court ruled:

> "Moreover, the Court is required to take the view most favorable to the party opposing the motion, giving that party the benefit of all favorable inference that may be drawn from the evidence." (Motion was for summary judgment).

It is considered worthy of thought on the question of Certiorari that the Trial Judge was a Michigan judge and, therefore, a compulsory member of the State Bar, paying due sand having a financial interest therein — all of which was pointed out to said judge before he dismissed this Petitioner's complaint. Such an interest should have been sufficient for said Trial Judge to disqualify himself, because under such circumstances he cannot be sincerely

and honestly considered impartial, free from bias, and his decision cannot be otherwise than slightly tarnished — also applies to Justice O'Sullivan of Court of Appeals. *Yazoo vs. Miss. Valley R. R. Co.*, 42 *L. R. A.* (N. S.) 1172; *Tumey vs. State*, 273 U. S. 510, supra.

The mis-statement of the issues involved and pointing toward presumed ulterior motives of this Petitioner without justification therefor in the record and the brushing aside and belittling the real issues and good faith purposes of the Petitioner all tend to confirm the presence of bias in the mind of the trial judge in the District Court.

As a further basis for the granting of certiorari, this Petitioner calls attention to the fact that the United States Court of Appeals was just as bound to consider the allegations in this Petitioner's complaint true as was the District Court, and yet said Court of Appeals mis-stated some material facts which were well and clearly documented and in no way contradicted; and, also, said Court of Appeals elected not to recognize numerous relevant authorities cited by this Petitioner — many from the said Sixth Circuit. Said Court of Appeals resorted to a presumption of good faith on the part of the judges on the Michigan Supreme Court in the face of undisputed showing by this Petitioner that said State Supreme Court deliberately and knowingly made a false finding as to title to the State Bar property, *State Bar of Michigan vs. City of Lansing*, 361 Mich. 185, at 197; in face of the recorded deed in the name of the State Bar of Michigan, as appears in the Records of the Register of Deeds for Ingham County, Michigan, with the State of Michigan holding no interest; in the face of letters from the Clerk of said Supreme Court establishing the fact of the falsity of the claim of the State Bar that this Petitioner's complaints had been returned (Bachmann filed affidavit he had returned complaints in Mandamus hearing) to him on October 8, 1956 — such letters showing said complaints still in Bar File; (Attorney for State Bar admitted same in open Court); in face of the audit of the State Bar of Michigan showing the State Bar to be an independent Association, owning its own property and handling its own finances or with 9,000 members paying dues of $35.00 yearly (over $300,000.00 annually in dues alone) separate and independ-

ent of the State of Michigan; in spite of the statement of Officer Spitzley that one of the accused attorneys attempted to murder this Petitioner by stabbing him in the back with a screw-driver; in the face of the signed statement of Robert Arvidson, a reputable attorney, and testified to same in court as true showing one of the accused attorneys responsible for the disappearance of an entire Probate File; in face of the affidavit of George Dean, another reputable attorney, establishing that one of the accused attorneys had falsified as to material and relevant facts in order to obtain a favorable action out of said State Supreme Court — and Circuit Court — all of which facts were before said State Supreme Court, before the District Court and before the Court of Appeals, 6th Circuit in the Bill of Complaint of District Court and Court of Appeals, and were argued in both lower courts (all of these above documents were filed with the Court of Appeals as pertinent matters inadvertently omitted from appendix under rule 16, (4) (g) or (6)). All of these documents are in the Certified record to this Court from the Clerk of Court of Appeals, 6th Circuit. These documents not only show the falseness of the defendants and accused attorneys complained about, but also, the distortion of both the District Court and Court of Appeals. And in the face of an obvious refusal to compel the State Bar to comply with the Supreme Court Rules Concerning the State Bar of Michigan and in the face of the undisputed showing of too frequent exercise of supervisory powers over the State Bar so frequent that this Petitioner claimed it established said Court as Defacto officers of said State Bar and working so closely with said State Bar that an apparent conspiracy was established. None of the Defendants deny that the Charges are true, as all are backed by facts, facts and facts.

It is important, also, to consider that the U. S. Court of Appeals found that the State Bar did mail copies of the request for investigation upon the respondent attorneys at one time in July, 1956. However, this was as far as the process was permitted to go. In fact, said State Bar arbitrarily backed up and sought to start over again. This would rule out the theory set out by the U. S. Court of Appeals that Petitioner defaulted by not redrafting his complaint the fourth time.

The form and content of said request for investigation was certainly approved before it was mailed to the respondents, therefore, there was no justification for said State Bar to request still another complaint.

There is considerable doubt as to the power and authority of the officers of the State Bar to require re-drafts when the written complaint meets all specific requirements of the rules. No rule gives such authority to said State Bar or any of its officers. Petitioner served complete file of Request for Investigation (4) sets on the printed forms of the State Bar of Michigan and proper number for each accused attorney and plus two big files of records, affidavits, court testimony, police statements, court records, U. S. Income tax returns, which was about two inches thick, of over 100 pages and over 50 photostats. That in photostats required by the then State Chairman Grievance Committee and Executive Secretary — six sets of Photostats were served upon Mr. Bachmann, a copy of total sets of all photostats for each accused attorney and an office copy for the State Bar of Michigan, therefore supplying all the records and more than the State chairman of the Grievance Committee required. Petitioner filed all forms besides as required. The statement that the records, signed statements, the affidavits, testimony, photostats and etc. should be redrafted is ridiculous and the big files are not words, words, words as stated by the District Court, but, facts, facts, facts. He multiplieth facts without ending. At no time have defendants ever stated the charges are untrue, as each charge is backed by records and not words, words, words.

This Petitioner refers to the State Bar of Michigan appendix, which, petitioner has filed nine copies with his own copies of nine and refers to Par. 15 is correct and Par. 86 of their appendix is answered by the fact that Petitioner was subpoenaed, but the accused attorneys objected to his testimony as being "as equally within the knowledge of the deceased," and court denied admission of same. Vol. 342 Mich. 587 at page 593.

This Petitioner contends that it is repugnant to our principles of government set up in our Constitution and somewhat shocking to the sense of dignity associated with our Federal Courts that, after being selected as a qualified

candidate and after being duly appointed to a Federal Judge's post, with confirmation thereof, a Federal Judge would be denied the right to serve in such honorable office unless he joined a certain union and paid dues thereto. Such is the situation in Michigan under the Integrated Bar Act, *M. P. A.* #58 of 1935, and under the Supreme Court Rules Concerning the State Bar of Michigan.

If this Court does not grant certiorari to this petitioner, it will mean that he will be deprived of his day in court. The District Court dismissed without hearing any proofs and the U. S. Court of Appeals affirmed said dismissal. Petitioner's contention as to the errors of these are stated above and will not be repeated. However, it does seem that this Petitioner should be heard by some Court.

In *Hurtado vs. California*, 110 U. S. 516 at 535, the United States Supreme Court said:

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law — a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

Petitioner was not aware at the hearing in Court of Appeals, that Justice Clifford O'Sullivan was a compulsory member of the State Bar of Michigan from Port Huron, Michigan and should not have sat, being a dues paying member and financially interested. Said Justice is listed under the June, 1961 Roster of Members from Port Huron, Michigan. Justice Thomas F. McAllister of Court of Appeals 6th Circuit is listed under Grand Rapids, Michigan and Judge Fred W. Kaess of District Court is listed under Detroit, Michigan. Therefore this Petitioner did not receive an impartial tribunal or hearing in either Court and all his Constitutional Rights and Civil Rights were violated.

Chief Justice Miller admitted from the bench in open Court he had been sued for damages on a case such as the Petitioners and therefore should not have sat in this hear-

ing, as he was not free from bias, prejudice or partiality and from other improper motives.

Circuit Court Judge James E. O'Neill ruled from the bench that the State Bar of Michigan was "our union" and a phostatic copy is in Certified Record from the Court of Appeals and was argued in both District Court and Court of Appeals.

The Michigan Supreme Court and the State Bar of Michigan have violated all of the Petitioner's rights with bad faith, malice, prejudice, partiality, undue influence and from other improper motives.

Certiorari should be granted in this case because the Petitioner has been denied his day in court, because the Petitioner has been deprived of equal protection under the law, because the Petitioner has been the victim of unjust discrimination, because the Petitioner has, under color of law, been deprived of rights and privileges guaranteed to him by the Constitution, even though some of the state laws and regulations under color of which such deprivation was accomplished were themselves unconstitutional.

CONCLUSION

Therefore, petitioner respectfully requests that a Writ of Certiorari issue to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

HERBERT E. SAIER.
Petitioner, In Per Se.
Business Address:
℅ General Delivery,
Lansing, Michigan.

APPENDIX A

(Filed August 4, 1961, Carl W. Reuss, Clerk)

No. 14462

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HERBERT E. SAIER,
Plaintiff-Appellant,

vs.

STATE BAR OF MICHIGAN, THE SUPREME COURT OF THE STATE OF MICHIGAN, et al.,
Defendants-Appellees.

On Appeal from the District Court of the United States, for the Eastern District of Michigan, Southern Division

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Decided August 4, 1961

Before: MILLER, Chief Judge; CECH and O'SULLIVAN, Circuit Judges.

CECH, Circuit Judge. The United States District Court for the Eastern District of Michigan, Southern Division, dismissed the complaint of the plaintiff-appellant for the reason that it did not contain facts sufficient to constitute a cause of action. Herbert E. Saier, plaintiff-appellant appeals to this Court, seeking a reversal of the order of dismissal.

The defendants in the District Court and appellees here are State Bar of Michigan, several officers and former officers of the State Bar of Michigan, who are sued in their official capacity and individually, and the justices and former justices of the Supreme Court of Michigan, who are sued individually and in their judicial capacity.

Mr. Saier brought this action as a diversity of citizenship case, alleging that he was a citizen of Missouri and that he was damaged in excess of $10,000, exclusive of interest and costs. The district judge considered the complaint as an attempt to state a cause of action under section 1983 of Title 42 U. S. C., known as "The deprivation of civil rights act." The appeal is argued to us as such an action. The appellant has apparently abandoned any claim to jurisdiction by reason of diversity of citizenship. We consider that no cause of action is stated as a diversity case and therefore do not discuss that theory further.

We are of the opinion, as was the district judge, that if any cause of action is stated, the facts as alleged would invoke jurisdiction by virtue of the civil rights act. The question presented then is whether there are sufficient facts alleged in the complaint to show that the appellant was deprived of any "right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." Section 1343(3), Title 28, U. S. C.[1]

The pertinent facts as alleged in the complaint are as follows: On July 16, 1956, the plaintiff-appellant filed a complaint against four lawyers of the Michigan Bar, in the office of the State Bar of Michigan, at Lansing, with Executive Secretary Milton E. Bachman and Executive Assistant Joseph C. Cox. The lawyers involved in the charge were notified of the charges contained in the complaint. The appellant filed an amended and corrected request for investigation on September 10, 1956. On October 3, 1956, Mr. Bachman and Mr. Cox advised him that he had to make out new forms. He refused to do this and on

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[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress." Section 1983 of Title 42 U. S. C.

November 15, 1956 filed a petition for a writ of mandamus with the Supreme Court of Michigan. This petition was denied and subsequently he filed another petition with the same court for writ of mandamus which was also denied.

The complaint does not state the specific charges that were made against the accused lawyers, but inferentially it appears that they involve ". . . unethical conduct, false testimony and attempted murder with a deadly weapon, and with charges of their taking of a complete file out of the Probate Court of the County of Ingham, Michigan."

There is reference in the complaint to suits in various courts of Michigan both past and now pending. It is alleged that three of the accused lawyers have commenced an action on the equity side of the court, in Ingham County, Circuit Court.

No disciplinary action has been taken against the lawyers named in the request for investigation, and the appellant claims that his complaint has not been processed by the Michigan State Bar. This he claims is a denial of a right guaranteed to him under the Fourteenth Amendment of the Federal Constitution. Specifically, he claims it is a denial of due process of law, a denial of equal protection of the laws and unjust discrimination.

The pertinent part of the amendment reads, as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The question before the Court is a very narrow one. To determine that question, we are not concerned with what might be the ultimate outcome of a hearing of the charges against the accused lawyers. Neither is the seriousness of the misconduct complained of material for our determination of the question involved.

Assuming that the appellant's "Request for investigation" of certain attorneys has been denied by the State Bar of Michigan, has he been denied a right which is given to him by the Fourteenth Amendment to the United States Constitution?

Section 1983 of Title 42 U. S. C. provides that an action may be brought for redress of the "deprivation of any rights, privileges, or immunities secured by the Constitution . . ." (Federal). If the appellant has been denied the right of which he complains, his redress would be to have the District Court order the processing of the complaint by the State Bar. The ultimate that he might expect from this would be the disbarment of the accused lawyers. This might give him a certain amount of personal satisfaction but no material gain would result to him as a consequence of such action. It would not give him any judgment against the lawyers of whose misconduct he complains and whose actions caused him financial loss. Therefore, he has not been deprived of "life, liberty, or property. . . ." There are no allegations in the complaint to support a charge of a denial of equal protection of the laws or that he has been the subject of unjust discrimination.

Not only has he not suffered, according to the allegations of his complaint, any deprivation of a right under the Federal Constitution as a matter of fact, but legally no such right as he claims is guaranteed to him by the Federal Constitution.

License to practice law, the continuation of such license, regulation of the practice and the procedure for disbarment and discipline are all matters that are within the province of an individual state. As in Michigan, the creation of the office of attorney, the regulation and control of the practice of law, along with the procedure of disbarment is governed by "The Judicature Act" under the headings "Attorneys and Counselors," section 27.68 et seq. and "State Bar Association," sections 27.101 and 27.102, respectively, of Title 27, Michigan Statutes, Annotated; Rule 15, State Bar of Michigan.

In *In re Lockwood, Petitioner*, 154 U. S. 116, the court said, at p. 117: "In *Bradwell* v. *The State*, 16 Wall. 130 (83 U. S. 130), it was held that the right to practice law in the state courts was not a privilege or immunity of a citizen of the United States; *that the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers that was not transferred for its protection to the Federal government*, and its exer-

cise is in no manner governed or controlled by citizenship of the United States in the party seeking such license." (Emphasis added). And at p. 118: "It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word 'person' as therein used is confined to males, and whether women are admitted to practice law in that Commonwealth." See also: *Yeiser* v. *Dysart et al*, 267 U. S. 540; *Ayres* v. *Hadaway*, 303 Mich. 589, 595.

In *Theard* v. *United States*, 354 U. S. 278, at p. 281, the court said: "It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg* v. *California*, 353 U. S. 252, and *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment. While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court." See also: *Selling* v. *Radford*, 243 U. S. 46; *In re Crow*, 283 F. 2d 685, C. A. 6.

We find no authority and none has been cited to us to support the appellant's contention that he has a right under the Federal Constitution to require the State Bar of Michigan to process his complaint. The regulation of the practice of law, including the procedure of disbarment and discipline of members of the profession, is a function of state government. Consequently there has been no deprivation of right which would give rise to a cause of action under section 1983, Title 42, U. S. C.

In the final analysis, it is a judicial function to pass on the disbarment of a lawyer. As shown heretofore (In re Lockwood, Petitioners, supra), the regulation and control of the practice of law was not a power that was delegated to the Federal government but remained in the states. Under the statutes of Michigan, the Supreme Court of that state has the final determination of a disbarment proceed-

ing. Secs. 27.79, 27.102, Michigan Statutes Annotated; Sec. 25, Rule 15, State Bar of Michigan.

In 1824, Mr. Chief Justice Marshall said: "On one hand, the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. *For these objects, some controlling power, some discretion ought to reside in the court.* This discretion ought to be exercised with great moderation and judgment; *but it must be exercised;* and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself." (Emphasis added).

• • •

"The power is one which ought to be exercised with great caution, but which is, we think, incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession." *Ex parte Burr*, 22 U. S. 529, 9 Wheat. 529. See also: *Ex parte Garland*, 71 U. S. 333, 378, 4 Wall. 333, 378.

The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar.

After this denial, he should have given consideration to the request of the State Bar Officers. It is alleged in the complaint that on October 3, 1956, he was requested to furnish new forms which he refused to do. There is nothing in the complaint to show that this request was arbitrary

or capricious and, in refusing to comply, the appellant cannot say that the bar refused to process his complaint but, rather, he puts himself in default by his own allegations.

The appellant charges in his complaint that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions for the sole reason that they themselves were members of the Michigan State Bar. The situation is not open to any such arbitrary presumption. Lawyers are officers of the court and the courts have a duty to supervise their conduct. As Mr. Chief Justice Marshall said, in ex parte Burr, supra, "The power is . . . incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession."

The judges are as much interested as any third person could be in the decorum and respectability of the lawyers who practice before them. It is inconceivable that the judges of the Supreme Court would so far transgress the dignity and responsibilities of their high office to protect lawyers in such misconduct, as is inferred here, at the expense of the reputation of its bar.

There is no charge in the complaint that the judges, in denying the petitions for mandamus, acting arbitrarily, capriciously, or maliciously. We must assume then that they acted in good faith in their judicial capacity. Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception to this rule. *Bradley* v. *Fisher*, 80 U. S. 335; 13 Wall. 335; *Kenney* v. *Fox*, 232 F. 2d 288, C. A. 6; *Allen* v. *Groat*, 283 F. 2d 692, C. A. 6.

The appellant in his complaint alleges that the Michigan Supreme Court and the Michigan State Bar conspired together and with others unknown to him to deny him the rights of which he complains. The allegations in the complaint are that the appellant filed actions for mandamus in the Supreme Court and that they were denied. None of the elements of conspiracy are pleaded. There is only the conclusion of the pleader.

"The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accom-

plish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." *Duplex Co.* v. *Deering*, 254 U. S. 443, 465.

We conclude that the right to require the State Bar to process appellant's request for an investigation of certain lawyers is not a right guaranteed by the Federal Constitution; that litigation to compel the State Bar to process the complaint of the appellant has been adjudicated in a court with jurisdiction to hear the cause and is now terminated, and that the State Bar has not refused to process the complaint but that the appellant is in default for not complying with the request of the State Bar to furnish new forms.

We further conclude that the complaint does not contain facts sufficient to charge a conspiracy against the Supreme Court and the State Bar.

Having reached these conclusions, we do not reach other questions raised by the appellant.[2]

The judgment of the District Court is affirmed.

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[2]The Integrated Bar Act of Wisconsin was sustained by the Supreme Court of the United States on June 19, 1961, in *Trayton L. Lathrop, Appellant* v. *Joseph D. Donohue*.